90-1847

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

FRANK J. CAMOSCIO,

PETITIONER,

VS.

PATTY ANN HODDER, ET AL.,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. IS RESPONDENT HURLEY ENTITLED TO JUDICIAL IMMUNITY.

B. IS RESPONDENT HODDER ENTITLED TO ABSOLUTE IMMUNITY.

C. CAN THE COURT AWARD MONETARY JUDGMENT TO PARTIES THAT ARE GIVEN IMMUNITIES FOR THEIR WRONGFUL ACTS.

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner, Frank J. Camoscio respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in the above-entitled cause on March 4, 1991.

I.

OPINION BELOW

The memorandum opinion of the Court of Appeals is attached as Appendix A. The district court of Massachusetts issued opinions which are entered in Appendix B.

* * *

II.

JURISDICTION

The opinion of the Court of Appeals for the First Circuit was filed on March 4, 1991. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254 (1).

III.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment, Section 1 of the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

IV.

STATEMENT OF FACTS

Petitioner, Frank J. Camoscio, filed suit in Federal District Court on September 7, 1988. The complaint was based on civil rights statutes which both respondents Judge Walter J. Hurley and Patty Ann Hodder had violated. Judge Hurley violated the petitioner's constitutional rights when he heard a criminal case filed against the petitioner by respondent Hodder accusing

him of allegedly threatening her on October 9, 1986, October 13, 1986 and February 2, 1987. During the May 1, 1987 trial Judge Hurley stopped the petitioner Camoscio from questioning a witness concerning the February 2, 1987 date. The transcript reads as follows: "Q. [Camoscio]: 'This is on February the second of this year, Ms. Potter [Hodder] says that there was another verbal threat.' J [Judge Hurley]: 'I don't have any testimony as to that.' "This statement by respondent Hurley proved that he was well aware that no testimony was presented to find the petitioner guilty for alleged threats on February 2, 1987. Judge Hurley found the petitioner Camoscio guilty for allegedly threatening respondent Hodder on February 2, 1987 yet during the trial Judge Hurley stated that there was no testimony by Hodder thus

proving that Judge Hurley had acted outside his judicial scope destroying any judicial immunity he had.

Judge Hurley then tampered with court records to have it appear as if petitioner Camoscio was found guilty of two counts of threatening to do bodily harm and one count of trafficking in cocaine. The petitioner, when discovering this tampering of the court record, made an appointment with Chief Justice Feeney. Meeting in chambers with both Justice Feeney and Judge Hurley, the petitioner was informed that it was only a clerical error but both judges refused to correct it or put it in writing. Judge Hurley during this meeting told the petitioner to go to hell and stated that he was nothing more than a troublemaker because of a newspaper article he had read in which the petitioner was critical of the

governor giving out drug licenses to unqualified individuals.

The petitioner was forced to go to federal district court in order to correct these wrongdoings. Justice Feeney then corrected the court record, however, prior to this correction information was transmitted to Interpol, as well as businessmen in the area in which the petitioner runs a clinic, were contacted by high-ranking Boston Police officials to inform them that the petitioner was head of a drug cartel.

If this were true, the petitioner would not be bothering to write this brief because of the immense wealth he would have. These acts to discredit the petitioner was for the sole benefit to protect Michael Dukakis's reputation while he was running for president.

Respondant Hodder entered into a

scheme with state officials to file false criminal charges against Dr. Camoscio for allegedly threatening her on three occasions. On May 1, 1987 Mary Orfanello represented respondent Hodder in Boston Municipal Court. Respondent Hodder admitted that she filed charges against the petitioner because he started suing her for a million dollars a day. However, the petitioner filed suit in March, 1987. Hodder filed her charges on February 4, 1987. The petitioner had spoken via telephone to several different lawyers and he was planning to file suit in early February but due to financial problems postponed filing until March. The only way Hodder could have learned of this was by a wire-tap on the petitioner's telephone by state officials. This proves that Hodder knowingly conspired with state officials to file false charges against

the petitioner.

The petitioner was cleared of all charges on May 1, 1989 when Judge Hershfang had to stop the trial because respondent Hodder had committed perjury. Under Massachusetts laws, the petitioner was allowed the right of a trial de nova before a jury which Judge Hershfang heard on April 28, 1989 and May 1, 1989.

Judge Hurley and Mary Orfanello have been the subject of several newspaper articles concerning political favoritism in the way they handle their cases and they are both presently under investigation.

The petitioner's action in federal district court was dismissed on the grounds that Judge Hurley had judicial immunity and respondent Hodder had absolute immunity. The court further awarded respondent Hurley $240 in

damages and $3,000 in damages to respondent Hodder. The petitioner proved that Hodder and her attorney had committed perjury in each and every filing in federal district court. Judge Woodlock awarded respondent Hodder with $3,000 for these criminal acts and refused to prosecute her. The petitioner has refused to pay one cent to these perjurers and criminals.

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE BOUNDARIES OF JUDICIAL IMMUNITY.

There is no question that respondent Judge Hurley found the petitioner guilty of an offense in which there was no testimony before him.

This is known by Judge Hurley's own words during the trial. It is also known that Judge Hurley was preconceived against the petitioner and should have stepped aside because of a newspaper article he had read. This prejudice was discovered by the petitioner when he met Judge Hurley in Judge Feeney's chambers. The petitioner cites the following cases: Rankin v. Howard, 633 F. 2d 844 (1980), "(1) if the judge had agreed in advance to rule favorably on the guardianship petition, such an agreement would not be a judicial act for which the judge would be cloaked with judicial immunity." and Pierson v. Ray, 386 U.S. 564, "We should, of course, not protect a member of the judiciary 'who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the

public good.' "

B. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE BOUNDARIES OF ABSOLUTE IMMUNITY.

The petitioner states that respondent Hodder is not entitled to absolute immunity because Hodder had knowingly presented false testimony against the petitioner and had filed criminal charges which she knew to be false against the petitioner. This was proved beyond any reasonable doubt when Judge Hershfang had to stop the trial and find in the petitioner's favor concerning these criminal charges because Hodder had been caught committing perjury. Due to the fact that respondent Hodder had knowingly filed false charges against the petitioner absolute immunity is destroyed. The

plaintiff cites the following case: Lopez v. Vanderwater, 620 F. 2d 1229 (1980), " (3) there was factual issue, precluding summary judgment for business associate, as to whether he knew when he signed charging papers that judge was carrying out scheme to use his official position to railroad plaintiff by first causing charge to be brought and then acting as judge after already deciding what outcome would be."

C. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE POWER OF THE COURT TO AWARD MONETARY JUDGEMENTS TO PARTIES GIVEN IMMUNITIES FOR THEIR WRONGDOINGS.

The petitioner states that if the respondents were not given immunity then they would have been paying him

for damages. There is no question that respondent Hodder filed false criminal charges against the petitioner. There is no question that respondent Hodder filed false statements in federal district court. The petitioner supplied the court with proofs that Hodder had committed perjury by conflicting sworn statements made to several different courts. Judge Woodlock gave the respondents immunities and rewarded them by giving judgment in their favor with Judge Hurley to receive $240 and Hodder to receive $3000. The petitioner has refused to pay one cent because the respondents have violated his civil rights.

VI.

CONCLUSION

This case provides this court with

an opportunity to put justice back into the judicial system and make people more accountable for their wrongdoings. If this court fails to act it gives a green light for corrupt judges and their friends to do as they please and make a mockery out of the judicial system.

Respectfully submitted,

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DATED: May 29, 1991

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992
Domenic Bruno
5/29/91

APPENDIX

United States Court of Appeals

For the First Circuit

No. 90-1735

FRANK J. CAMOSCIO,

Plaintiff, Appellant,

v.

PATTY ANN HODDER, ET AL.,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES

DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Douglas P. Woodlock,

U.S. District Judge]

Before

Campbell, Torruella and Selya,

Circuit Judges.

Frank J. Camoscio on brief pro se.

Timothy J. Crispo, Jr. on brief for appellees.

March 4, 1991

Per Curiam. This court, having reviewed the parties briefs and the record on appeal, affirms the dismissal of plaintiff's complaint against Judge Walter Hurley under Stump v. Sparkman, 435 U.S. 349, 355-359 (1978). We affirm the dismissal of plaintiff's complaint against defendant Patty Ann Hodder for the reasons set forth in the district court's comprehensive Memorandum and Order dated May 23, 1989.

We agree that the plaintiff's action is frivolous, unreasonable, and wholly without foundation under the law, and therefore we affirm the order granting defendant Hodder's motion for attorney's fees and costs.[1] Plaintiff's motion for sanctions is denied.

Finding this appeal to be similarly frivolous, we further award defendants Hurley and Hodder attorney's fees, which we set at $100.00 for de-

fendant Hurley and $300.00 for defendant Hodder, and costs of appeal.

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1. We affirm the award of attorneys fees to Judge Hurley as well.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FRANK J. CAMOSCIO, Plaintiff,	)	
v.	)	CIVIL ACTION
JUDGE WALTER J. HURLEY and PATTY ANN HODDER, Defendants.	)	NO. 88-2051-WD

ORDER OF DISMISSAL

WOODLOCK, D.J.

In accordance with this Court's allowance of Defendant Hurley's Motion to Dismiss on October 5, 1988 and in accordance with this Court's Memorandum and Order issued on May 23, 1989, allowing the Defendant Hodder's Motion to Dismiss, it is hereby ORDERED that the above-entitled action be and hereby is DISMISSED.

IT IS FURTHER ORDERED in accordance with this Court's allowance of the Defendant Hurley's Motion for Attorney Fees on December 6, 1988 that the Plaintiff pay Defendant Hurley's attorney Fees in the amount of $240.00.

BY THE COURT,

BARBARA QUARTULLI

_____

Deputy Clerk

Dated: May 24, 1989

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FRANK J. CAMOSCIO,	)	
Plaintiff,	)	CIVIL ACTION NO.
v.	)	88-2051-WD
PATTY ANN HODDER,	)	
Defendant.	)	

MEMORANDUM AND ORDER

May 23, 1989

WOODLOCK, D.J.

The remaining defendant in this civil rights action, Patty Ann Hodder, has moved to dismiss the claims against her pursuant to Fed. R. Civ. P. 12(b)(6). The Complaint charges her with violations of 42 U.S.C. §§ 1983, 1984, 1986, and 1988. It further alleges violations of the plaintiff's right to

due process under the fourteenth amendment. The claims stem from charges brought and false testimony allegedly given by Ms. Hodder against the plaintiff, Frank J. Camoscio, in a state criminal proceeding in which he was convicted for threatening to commit a crime against her.[1] For the reasons

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[1] This action was also brought against Judge Walter J. Hurley of the Boston Municipal Court, who presided over Mr. Camoscio's criminal trial and adjudged him guilty at its close. Judge Hurley, who is absolutely immune from suit for his judicial acts, was dismissed as a defendant in this case. Mr. Camoscio sought and was granted a trial de novo by jury in the state court on the same charges. He recently informed this court, through a "motion to add additional information," that a

verdict was directed in his favor after the state's case in that trial. Although Mr. Camoscio has offered no documentary support for his assertion that a verdict was directed, I shall assume the truth of this assertion. As appears below, however, it has no impact on the outcome of the instant civil action.

discussed herein, Ms. Hodder's motion to dismiss will be allowed.

I

42 U.S.C. § 1983 requires that the defendant have acted "under color of law" in order to be held liable. "It is beyond question that, when a private party gives testimony in open court in a criminal trial that act is not performed 'under color of law.' " Briscoe v. Lahue, 460 U.S. 325, 329-30 (1983). Section 1983 does not authorize a claim

for damages against private witnesses.[2]

"It is conceivable [, however,] that non-governmental witnesses could act 'under color of law' by conspiring with the prosecutor or other state officials." Id. at 330 n.7. The plaintiff has not alleged any facts to support such an inference in this case. In any event, even if he could show that Ms. Hodder was acting under color of law in this manner when she allegedly committed perjury in the judicial proceeding against him, she would enjoy absolute immunity from a § 1983 suit. Id. at 345-46.

II

Although the plaintiff has pleaded violations of 42

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[2] The plaintiff's due process

claim fails for the same reason. State action is the sine qua non of any fourteenth amendment claim.

U.S.C. § 1984, that statute no longer exists[3] and his claim thereunder is accordingly dismissed.

III

Mr. Camoscio has also failed to state a claim under 42 U.S.C. § 1986. A claim cannot succeed under § 1986 unless a plaintiff successfully makes out a claim under § 1985. Hahn v. Sargent, 523 F. 2d 461, 469-70 (1st Cir. 1975), cert. denied, 425 U.S. 904 (1976); see also Mahoney v. Nat'l Org. for Women, 681 F. Supp. 129, 135 (D. Conn. 1987) (where plaintiff has no cause of action under § 1985, he can sustain no claim under § 1986); Davey v. Tomlinson, 627 F. Supp. 1458, 1462 (E.D. Mich. 1986)

(§ 1986 is designed to punish those who aid and abet a § 1985 violation).

The plaintiff here has failed to plead a violation of § 1985.[4] pro se complaint is to be read liberally, however,

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[3] Section 1984 has been repudiated and withdrawn in a piecemeal fashion. Subsections 1 and 2 of the Act of March 1, 1875, ch. 114, § 5, 18 Stat. 337, providing both a private cause of action and a criminal sanction against any individual who denied a person access to private accommodations on the basis of race, were struck down as unconstitutional by the Supreme Court in The Civil Rights Cases, 109 U.S. 3 (1883). Subsection (3), giving the federal courts exclusive jurisdiction over actions brought pursuant to the Act, and subsection (4), making it illegal

to disqualify any person from jury service on the basis of race, were repealed in 1948. Act June 25, 1948, ch. 645, § 21, 62 Stat. 862. The remaining provision of the statute--providing for Supreme Court review of any action brought under the Act--thus became moot and has accordingly been omitted from the United States Code.

[4] Mr Camoscio has not moved to amend his Complaint to include a claim for violations of § 1985. The suggestion to him that § 1986 is dependent upon pleading § 1985 was made by Magistrate Collings in the following colloquy:

see Hurney v. Carver, 602 F. 2d 993, 995 (1st Cir. 1979), and thus for purposes of this motion to dismiss, I shall assume that § 1985 was raised as

a ground for liability.

Section 1985 deals with conspiracies by private individuals to deprive other persons of the equal protection of the laws.[5] In Griffin v. Breckenridge, 403 U.S. 88

MR. CAMOSCIO: How about 1985, conspiracy to interfere with civil rights ?

THE COURT: That's not one that you mentioned to me. . . .

MR. CAMOSCIO: Ninteen eighty-five is also there, Your Honor. I'm sorry. No ?

Oh, it was 1986--action for the right to prevent . . .

. . .

THE COURT: So 1986 . . .

MR. CAMOSCIO: And 88. (pause)

THE COURT [referring to § 1986]:

Well, that refers back to 85.

(pause)

I'm sorry Mr. Camoscio. I don't see it. I think the best thing to do is to allow you, Mr. Crispo, to file a motion to dismiss . . .

Transcript March 20, 1989, at 14-16.

[5] The only arguably pertinent provisions of § 1985 are subsection (3) and the second part of subsection (2). Subsection (3) authorizes a cause of action for damages if a person is injured as a result of certain conspiratorial actions by private persons. A suit will lie if

> two or more persons in any State or Territory conspire, . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immuni-

> ties under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . .

The second part of subsection (2) provides the injured party with a private cause of action

> if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen

(1971), the Supreme Court held that a violation of § 1985(3) did not require

state action, it did require "some racial, or perhaps otherwise classbased, invidiously discriminatory animus behind the conspirators' action." Id. The First Circuit has emphasized this limitation on the scope of § 1985, stating that "'the complaint must allege facts showing that the defendants conspired against the plaintiffs because of their membership in a class and that the criteria defining the class were invidious.'" Hahn v. Sargent, 523 F. 2d at 469 (quoting Harrison v. Brooks, 519 F. 2d 1358 (1st Cir. 1975)); see also Daley v. Town of New Durham, 733 F. 2d 4, 7 (1st Cir. 1984). Although Griffin v. Breckenridge dealt only with subsection (3) of § 1985, the First Circuit was "inclined to read [§ 1985(2)] as paralleling § 1985(3), and subject, therefore, to the same doubts and limi-

tations" as subsection (3). Hahn v. Sargent, 523 F. 2d at 469.

The plaintiff has adduced no facts to suggest any invidious class-based animus by defendant Hodder, and a § 1985 claim must therefore fail.

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the equal protection of the laws. . . .

42 U.S.C. § 1985(2).

The first part of subsection (2) has no pertinence to the plaintiff's action because it deals only with obstructing justice in federal courts. See Hahn v. Sargent, 523 F. 2d at 469. Similarly, subsection (1) of § 1985, which deals with preventing an officer

from performing his or her duties, is wholly inapplicable.

IV

The plaintiff's final ground for liability is 42 U.S.C. § 1988, the provision authorizing attorney's fees to the party prevailing in an action brought under the civil rights statutes. Because the plaintiff's claims under 42 U.S.C. §§ 1983, 1984, 1985, and 1986 are wholly without merit, his prayer for attorney's fees must fail.

V

In light of my decision to dismiss the plaintiff's claims against Ms. Hodder, his Motion for Reconsideration of the protective order issued by Magistrate Collings on March 20, 1989, as well as his Motion to Remove the Magistrate

from the case, is moot.

VI

For the reasons set forth above, the Motion to Dismiss filed by Ms. Hodder is hereby ALLOWED. Judgment to enter accordingly.

DOUGLAS P. WOODLOCK

DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE